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May 3, 2017

VIA ELECTRONIC FILING

Hon. Edgardo Ramos
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: Letter Motion to Reopen Case and Permission to file Motion for Contempt/Compel
Herbalist & Alchemist, Inc. v. Alurent Products, Inc. and Will Clarent
(16-CV-9204)**

Dear Judge Ramos:

This firm represents Plaintiff Herbalist & Alchemist, Inc. ("Plaintiff") in the above-captioned matter. On March 8, 2017, an Order of Default Judgment ("Order") was entered against defendants Alurent Products, Inc. and Will Clarent (collectively the "Defendants")¹. A copy of the Order is attached hereto at Exhibit A. Since that time, and as outlined in detail below, Defendants and complicit third parties have ignored this Court's Order and have willfully refused to comply with the same.

¹ The Order determined, *inter alia*, Defendants were liable to Plaintiff for violating 15 U.S.C. § 1125(a)(1)(A). The Order also directed, among other things, **Defendants**, their directors, principals, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and **all others in active concert or participation with Defendants, be permanently** enjoined and restrained from, among other things: (1) imitating, copying, or making any other infringing use or providing services bearing Plaintiff's mark, HERBALIST & ALCHEMIST (the "**Mark**"); (2) providing, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any services bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of Plaintiff's Mark. It also directed the forfeiture to Plaintiff or cancellation of the domain name "herbal-alchemist." *See* Exhibit A (Order) (emphasis added).

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Given the foregoing, we respectfully request the Court reopen the case and permit Plaintiff to file an application, by order to show cause, for an order: (1) holding Defendants in contempt of Court for willfully refusing to comply with the Order and directing immediate compliance with the same; (2) directing third parties Facebook, Amazon, SupplementPolice, SupplementJournal, IDWeeds and YouTube, to remove Defendants' infringing material from their respective websites; (3) directing Enom to cancel the domain name "herbal-chemist.com"; and (4) awarding legal fees, costs and sanctions against Defendants and the aforementioned third parties for their contumacious and unlawful conduct.

As an initial matter, Defendants deliberately failed to appear in this matter and have intentionally refused to comply with the Order. Indeed, Defendants have continued to advertise, market and sell their products on their own website and the websites of others.

After this Court issued the Order, Plaintiff served takedown notices on, among others, Facebook, Amazon, SupplementPolice, SupplementJournal, IDWeeds and YouTube demanding removal of Defendants' infringing content maintained on their respective websites. Plaintiff also served a Notice to Cancel the domain name "Herbal-chemist" on Enom, the domain registrar of Defendant's website. (Facebook, Amazon, SupplementPolice, SupplementJournal, IDWeeds, YouTube and Enom collectively referred to as "Third Parties.") In flagrant disregard of the Court's Order, these Third Parties refused to comply with the same, necessitating a subsequent demand by Plaintiff, which these Third Parties have continued to ignore. By refusing to comply with Plaintiff's request and the Court's Order, the Third Parties have knowingly aided and abetted Defendants in their infringing conduct. Examples of the foregoing correspondence, without exhibits, are collectively attached hereto at Exhibit B.

The ongoing intentional infringing acts by Defendants and third parties have caused, and will continue to cause, damage to Plaintiff's business identity, reputation and goodwill. As such, Plaintiff respectfully requests that the Court reopen the case and permit Plaintiff to file an application, by order to show cause, for an order: (1) holding Defendants in contempt of Court for willfully refusing to comply with the Order and directing immediate compliance with the same; (2) directing the Third Parties to remove Defendants' infringing material from their respective websites; (3) directing Enom to cancel the domain name "herbal-chemist.com"; and (4) awarding costs and sanctions against Defendants and the aforementioned Third Parties for their contumacious and unlawful conduct.

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The Court's time and attention to this matter is appreciated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Monica P. McCabe".

Monica P. McCabe

Attachments

cc: Kathryn T. Lundy, Esq.